

No. 508

A. Sta

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

GEORGE W. REED, ADMINISTRATOR,
ETC., ET AL.,

Appellants,

VS.

JOHN A. STANLY, TRUSTEE, ETC.,
ET AL.,

Appellees.

EXHIBITS

Attached to Pleadings in Original Case, Omitted
from the Transcript, and Printed by Leave
of the Court, Obtained at
the Argument.

Appeal from the Circuit Court of the United States
for the Northern District of California.

FILED

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Exhibit No. 1 to Original Bill.

INDENTURE—CATHERINE M. GARCELON TO J.
P. and F. A. MERRITT.

(Also Attached as Exhibit "A" to Second Supplemental
Bill.)

This indenture, made and entered into this fourteenth day of November, A. D. 1890, by and between Catherine M. Garcelon, of the city of Oakland, county of Alameda, State of California, party of the first part, and James P. Merritt and Frederick A. Merritt, of the city and county of San Francisco, in said State, parties of the second part,

Witnesseth: Whereas, the late Dr. Samuel Merritt departed this life on or about the seventeenth day of August, 1890, seised and possessed of a large estate, consisting of realty and personalty, which he disposed by a paper writing purporting to be his last will and testament, and which said paper writing was thereafter and on the — day of September, 1890, duly admitted to probate in and by the Superior Court of the State of California, in and for the said county of Alameda; and

Whereas, the sole heirs at law of the said Samuel Merritt are his sister, the said Catherine M. Garcelon, and his two nephews, the said James P. and F. A. Merritt, sons of the late Isaac Merritt, the brother of the said Catherine M. Garcelon, and the said Samuel Merritt, deceased; and

Whereas, in and by his said last will and testament, the said Samuel Merritt did devise and bequeath to the

said Catherine M. Garcelon the great bulk of all the estate of which he died seised or possessed; and

Whereas, the said James P. and F. A. Merritt are dissatisfied with the provision made for them in and by said last will and testament, and have threatened to institute a contest of said last will and testament; and

Whereas, the parties hereto are minded to avoid and prevent such contest, and to escape all the painful and disagreeable incidents which would unavoidable attend such a family dispute, and have, after full examination into the facts, and full and deliberate consideration of the premises, and after advising and counseling with their respective legal advisers, and not acting upon, influenced by, or relying upon any statement or representation made by one or either to the other or others, agreed upon the terms and conditions of a settlement and adjustment of all matters of difference existing between them, in relation to their respective rights and interests in and to all the real and personal property of which the said Samuel Merritt was seised or possessed, or to which he was in any wise entitled at the time of his death.

Now, therefore, for and in consideration of the premises, and for the purpose of carrying out and effecting the said agreement of settlement and adjustment, and of the sum of ten dollars, by each of the parties hereto, of the first and second part, to each other in hand paid, the receipt of which is hereby respectfully acknowledged, the parties hereto do hereby covenant, promise and agree to and with each other as follows:

First.

Simultaneously with the execution of these presents, the parties of the second part shall execute such documents as may be prepared by the counsel of the party of the first part, and approved by the counsel of the parties of the second part, as will secure the aforementioned last will and testament and every part and clause thereof, and the order or judgment of said Superior Court admitting the same to probate, from all possibility of question or contest by the said parties of the second part hereto, or by their heirs, executors, administrators, or assigns, and that the said document, when so executed, shall forthwith be filed by the parties of the second part, or their attorney, in the said Superior Court in the matter of the estate of the said Samuel Merritt therein pending.

Second.

Contemporaneously with the execution of these presents, the parties of the second part shall make, execute, and acknowledge to the party of the first part, their deed of grant, bargain, and sale, in and by which they shall convey, transfer, assign, and set over to the party of the first part all the right, title, and interest which they or either of them, would, could, or might have acquired, or been entitled to, in and to all the property, real and personal, of which the said Samuel Merritt was seised or possessed, or to which he was in anywise entitled, at the time of his death, if the said Samuel Merritt had died intestate; and said deed of conveyance shall contain such apt words of warranty and covenant as may be prescribed and approved, by the counsel of the parties of the first

and second parts respectively, to the end of securing to the party of the first part full right and ample power to dispose of all the property derived by her from the said Samuel Merritt, or by the deed of conveyance and transfer herein provided for, also of all the income to be derived therefrom, and of all property, real and personal, which the party of the first part now owns or hereafter may acquire, either by deed or last will and testament, without any right, power, or authority of the parties of the second part hereto, or either of them, or their respective heirs or assigns, to question, dispute or contest, the same in any manner, or to any extent whatever. And contemporaneously with the execution of such deed of conveyance and transfer, the parties of the second part hereto shall make, execute, and acknowledge any separate agreements and covenants which may be prescribed and approved by the counsel of the parties of the first and second parts, securing to the party of the first part the full and ample power of disposition of all of said property by deed or will, free from all possibility of such disposition being disputed, questioned, or contested by the parties of the second part, or either of them, or by their respective heirs or assigns.

The papers herein provided for to be executed by the parties of the second part shall immediately thereafter be delivered by the parties of the second part to Eugene Meyer, to be held by him in escrow, and to be delivered by him to the party of the first part, whenever he may be advised by John A. Stanly that the party of the first part is entitled to such delivery under the provisions of these presents.

Third.

The party of the first part shall and will upon the execution, filing, and delivery of the documents, instruments, and papers hereinbefore provided for to be executed by the parties of the second part, pay to the parties of the second part, to be equally divided between them, the sum of ten thousand dollars, and that she will, as soon as in the due course of the administration of the estate of the said Samuel Merritt, she can obtain a distribution or partial distribution of that sum of money, pay to the parties of the second part, to be equally divided between them, the further and additional sum of one hundred and fifteen thousand dollars (\$115,000), and upon the payment of said sum of one hundred and fifteen thousand dollars (\$115,000), the party of the first part shall be entitled to the absolute delivery of the deed and instruments hereinbefore provided to be delivered in escrow for her.

The party of the first part reserves the right to pay the whole of said sum of one hundred and twenty-five thousand dollars (\$125,000) upon the execution hereof, or at any time thereafter, and to receive said deed and other documents as soon as the same is paid.

Fourth.

The party of the first part shall and will convey to the California Title Insurance and Trust Company, or other trustee as may be agreed upon by the parties hereto, certain real estate in trust, that the income to be derived therefrom may be enjoyed by the parties of the second part respectively, in accordance with the provisions of

said trust deed. Said real estate is described as follows, viz:

1st. That lot or parcel of land situtaed in the city of Oakland, on the southwest corner of Madison and Fourteenth streets, one hundred (100) feet front on Madison street, and one hundred and fifty (150) feet front on Fourteenth street, being a part of block 196.

2nd. The one-half of block 168 in said city of Oakland, fronting on Twelfth street, between Madison and Oak streets, fronting three hundred (300) feet on Twelfth street, by a uniform depth of one hundred (100) feet.

3d. The lot on the northeasterly corner of Webster and Eleventh streets, in said city of Oakland, one hundred (100) feet square.

4th. The lot on Merrimac street, in said city of Oakland, commencing at a point on the southerly line of Merrimac street, distant two hundred and seventy-three and four-twelfths ($273 \frac{4}{12}$) feet westerly from the westerly line of Webster street; running thence westerly along said line of Merrimac street forty (40) feet; thence at right angles southerly one hundred and forty-three (143) feet; thence at right angles easterly forty (40) feet; thence at right angles northerly one hundred and forty-three (143) feet.

5th. The lot on the northeasterly corner of Fifth and Center streets, in said city of Oakland, being one hundred and eighty-five (185) feet and eight and one-quarter ($8\frac{1}{4}$) inches on Center street, by one hundred and sixty (160) feet and (11) inches on Fifth street.

6th. The lot of land, in said city of Oakland, situate on the northerly side of Fifth street between Adeline and

Linden streets, fronting five hundred and seventy-eight (578) feet on Fifth street, by a depth of one hundred and one (101) feet and three (3) inches on Adeline street, and of one hundred and two (102) feet on Linden street.

7th. The lot of land in said city of Oakland on the south side of Fifth street, between Adeline and Chestnut streets, fronting on Fifth street two hundred and fifty-four (254) feet, by a depth on Adeline street of ninety-seven (97) feet three (3) inches, and on Chestnut street of ninety-five (95) feet.

8th. That lot of land in said city of Oakland known as fractional block twenty-six (26), East Oakland.

9th. That lot of land in said city of Oakland known as East Oakland block No. twenty-eight (28), bounded by East Eleventh street, East Twelfth street, Second avenue, and Third avenue.

10th. All the undivided one-half ($\frac{1}{2}$) of that certain tract in Oakland township known as Plat Ninety-one (91), on Kellersberger's survey of said township.

11th. That certain tract of land, Murray township of said county of Alameda, containing about twenty-six and fifty-nine one-hundredths (26 $\frac{59}{100}$) acres, and being the same conveyed to the late Samuel Merritt by I. W. Taber.

12th. All that certain tract of land in the city and county of San Francisco situate on the southerly line of Pacific street, commencing one hundred and sixty-five (165) feet from the westerly line of Taylor street; thence westerly on the said line of Pacific street one hundred and forty-two and one-half ($142\frac{1}{2}$) feet; thence at right angles southerly one hundred and seven and one-half ($107\frac{1}{2}$) feet; thence at right angles easterly thirty-two and one-half

(32½) feet; thence at right angles southerly thirty (30) feet; thence at right angles easterly one hundred and ten (110) feet; thence at right angles northerly one hundred and thirty-seven and one-half (137½) feet.

13th. That undivided one-fourth ($\frac{1}{4}$) interest in and to certain land in the said city and county of San Francisco, bounded by Larkin, Polk, Tonquin street, and Ship Channel.

14th. That certain lot of land in said city of Oakland, being all of block one hundred and ninety-seven (197), bounded by Madison, Oak, Thirteenth, and Fourteenth streets, excepting therefrom the lot on the northwest corner of Oak and Thirteenth streets, fronting sixty (60) feet on Oak and one hundred and twenty (120) feet on Thirteenth street.

15th. That certain lot of land in said city of Oakland on the south side of Thirteenth street between Madison and Oak streets, fronting three hundred (300) feet on Thirteenth street, by a uniform depth of one hundred (100) feet, north half of block one hundred and sixty-eight (168).

16th. That certain lot of land in said city of Oakland known as block one hundred and nine (109), bounded by Seventh, Eighth, Market, and West streets, together with the furniture in the building standing thereon, which was owned by the late Samuel Merritt.

17th. That certain lot of land in said city of Oakland known as block one hundred and ten (110), bounded by Eighth, Ninth, Market, and West streets.

And will pay to said trustee the sum of \$6,150 in money,

all of which is to be held in trust. The terms, conditions, and limitations of said trust shall be as follows viz:

1st. That the trustee shall have power and authority to sell or exchange any part of said real estate or improve the same as and whenever in its or his discretion the same will be judicious and for the best interests of the trust estate, and to reinvest the proceeds thereof in other real or personal property producing an income, the same to be held, as well as any property taken in exchange, upon the same terms, conditions, and limitations with like power of sale, exchange, and reinvestment as herein provided for.

2nd. That the trustee shall take and receive all the rents and income to be derived from the property so conveyed to it or him, and quarter yearly pay the one-half part of such rents and income, after deducting such commission and compensation as may be provided in said trust deed therefrom, together with the amount of all taxes and assessments and expenses of repairs, etc., which it or he may pay on account of said property, to each of the parties of the second part for and during their joint lives, provided that neither of the parties of the second part shall have any right to anticipate such income, or to transfer, assign, mortgage, pledge, or hypothecate the same, in any manner or to any extent whatever, and in this connection said trust deed shall contain such provisions as the counsel of the parties hereto shall prescribe and approve to secure the application of such income to the personal support and maintenance of the parties of the second part respectively, exclusive of, and not in any wise subject to, any rights of present or future creditors of the parties of the second part, or either of them, to resort to

the same for the satisfaction of any indebtedness now or at any time hereafter owing by the parties of the second part, or either of them.

3d. In case of the death of either one of the parties of the second part, if the one so first dying leaves a widow and child or children, the trustee shall pay the one-half of said rents and income to said widow and child or children in the proportion of one-fourth to such widow and the remaining three-fourths to such child or children, or to his, her, or their legally appointed guardian; if the one so first dying leaves him surviving a widow only, the one-fourth of such rents and incomes to be paid to such widow, so long as she remains such, for and during the life of the survivor of said parties of the second part, and the remaining three-fourths in this event to be paid to the survivor of the parties of the second part for and during his natural life; if the party so first dying shall leave him surviving a child or children and no widow, the whole moiety of the one so dying of said rents and incomes shall be paid to such child or children, or to his or her or their legally appointed guardian for and during the period of the natural life of the survivor of the parties of the second part, and if the party of the second part so first dying leaves no widow or child him surviving, the whole of the income and rents of the entire trust estate is to be paid to the survivor of the parties of the second part for and during the term of his natural life. Upon the death of the survivor of the parties of the second part, the trustees shall dispose of the entire trust estate as follows, viz: If the party of the second part who may have first died shall leave any child or children who them survive,

and the survivor of the parties of the second part shall likewise leave him surviving any child or children, the whole estate shall be divided per capita between all of the children of the said parties; if the one first dying leaves him surviving no child or children who may be living at the time of the death of the survivor of the parties of the second part, and the party of the second part who may live the longest, leaves him surviving any child or children, the whole estate shall go to such child or children, and if the party of the second part who may live the longest dies without leaving any child or children, but the one first dying has left him surviving any child or children, who may be living at the time of the death of the survivor of the party of the second part, the whole estate shall go to such child or children, and in event that both of the parties of the second part shall die without leaving *them* surviving them any child or children the whole of said estate shall go to such person or persons, who, at the time of the death of the survivor of the parties of the second part may be his heirs at law, claiming only through the paternal line of such survivor.

The said trust deed shall empower the trustee to permit either of the parties of the second part thereto, when he may marry, to occupy any dwelling-house property held by the trustee as his residence, deducting from his or their respective portions of the income of the trust the rental value thereof, and the trustee shall be empowered, in case either of the parties of the second part should so desire, who may be acquired, to acquire other residence property for his use and occupation, charging the party for whom the same is acquired the legal interest on the cost thereof

as a part of his portion of the income of the trust estate.

The said deed of trust shall contain apt words and provisions, to be dictated and approved by the counsel of the parties hereto, to constitute the estate thereby granted one upon strict condition subsequent, that the same shall be at once and ipso facto defeated and avoided in case the said parties of the second part, or either of them, or their or any of their heirs, or the heirs, or any of the heirs, of either of them, should at any time dispute, question, or contest the legality or validity of any disposition which the party of the first part may make by deed or last will and testament of any part of the property or estate, real or personal, derived by her from or through the late Samuel Merritt, including any and all property which she may acquire by reason of investments of the income and profits of the estate so derived by her, or by reason of the exchange of any such property, or by reason of the sale thereof, and the reinvestment of the proceeds of such sale. The said trust deed shall be made as soon as the party of the first part can obtain a decree or partial decree of distribution in the matter of the estate of the said Samuel Merritt, distributing such real estate to her.

In witness whereof, the parties hereto have set their hands this fourteenth day of November, 1890.

(Signed) CATHERINE M. GARCELON.

(Signed) FREDERICK A. MERRITT,
By W. W. Foote, his atty. in fact.

(Signed) JAMES P. MERRITT,
By W. W. Foote, his atty. in fact.

(Signed) J. P. MERRITT.

(Signed) FRED. A. MERRITT.

Witness:

JOHN A. STANLY.

Received Nov. 15, 1890, of Catherine M. Garcelon, the ten thousand dollars (\$10,000) payment referred to in the within contract.

(Signed) W. W. FOOTE.

(Signed) FRED. A. MERRITT.

(Signed) J. P. MERRITT.

Received Feb. 4, 1891, of Catherine M. Garcelon, the one hundred and fifteen thousand dollars (\$115,000) referred to and mentioned in the third subdivision of the within agreement.

(Signed) W. W. FOOTE.

(Signed) F. A. MERRITT.

(Signed) J. P. MERRITT.

Exhibit No. 2 to Original Bill.

INDENTURE—CATHERINE M. GARCELON TO J. N. KNOWLES.

(Also Attached as Exhibit "B" to Second Supplemental Bill.)

This indenture, made and entered into this nineteenth day of February, A. D. 1891, by and between Catherine M. Garcelon, of the city of Oakland, county of Alameda, State of California, party of the first part, and J. N. Knowles of the same place, party of the second part.

Witnesseth. That the said party of the first part, for and in consideration of the natural love and affection which the party of the first part has and bears unto and for her nephews, Frederick A. Merritt and James P. Merritt, both of said city of Oakland, county of Alameda and State

of California, has granted, conveyed, and delivered, and by these presents does grant, convey, and deliver unto the party of the second part all of the following described real and personal property, to-wit:

First. Block number one hundred and sixty-eight (168) in the said city of Oakland, bounded by Madison, Thirteenth, Oak, and Twelfth streets, together with the improvements thereon.

Second. That portion of block one hundred and ninety-seven (197), in said city of Oakland, described as follows:

Commencing at the northeasterly corner of Madison and Thirteenth streets, running thence northerly along the easterly line of Madison street two hundred (200) feet to the southerly line of Fourteenth street; thence easterly along the said line of Fourteenth street three hundred (300) feet to the westerly line of Oak street; thence southerly along the said line of Oak street one hundred and forty (140) feet; thence at right angles westerly one hundred and twenty (120) feet; thence at right angles southerly sixty (60) feet to the northerly line of Thirteenth street; thence westerly along said line of Thirteenth street one hundred and eighty (180) feet to Madison street and the point of commencement; together with the improvements thereon.

Third. That certain lot of land in said city of Oakland known as block number one hundred and nine (109), bounded by Seventh, Eighth, Market, and West streets, together with the furniture in the building standing thereon, which was owned by the late Samuel Merritt.

Fourth. That certain lot of land in said city of Oak-

land known as block number one hundred and ten (110), bounded by Eighth, Ninth, Market, and West streets.

Fifth. That certain lot of land in the said city of Oakland, commencing at a point on the northeasterly corner of Webster and Eleventh streets, running thence northerly along the easterly line of Webster street one hundred (100) feet; thence at right angles easterly one hundred (100) feet; thence at right angles southerly one hundred (100) feet, to the northerly line of Eleventh street; thence westerly along said line of Eleventh street one hundred (100) feet to Webster street, and the point of commencement, being lots Nos. 1, 2, 3, 4, and 28, in block No. 161.

Sixth. That certain lot in the said city of Oakland commencing at a point in the westerly line of Madison street, distant one hundred (100) feet northerly from the northwesterly corner of Madison and Thirteenth streets, running thence northerly along said line of Madison street one hundred (100) feet to the southerly line of Fourteenth street; thence westerly along said line of Fourteenth street one hundred and fifty (150) feet; thence at right angles southerly one hundred (100) feet, and thence at right angles easterly one hundred and fifty (150) feet to Madison street and the point of commencement, being lots Nos. 12 to 18, in block 196.

Seventh. That certain lot of land in the said city of Oakland, commencing at a point in the southerly line of Merrimac street, distant two hundred and seventy-three and four-twelfths ($273 \frac{4}{12}$) feet westerly from the westerly line of Webster street; running thence westerly along

said line of Merrimac street forty (40) feet; thence at right angles southerly one hundred and forty-three (143) feet; thence at right angles easterly forty (40) feet; and then at right angles northerly one hundred and forty-three (143) feet to the southerly line of Merrimac street and the point of the beginning.

Eighth. That a certain lot in the said city of Oakland, commencing at a point in the northeasterly corner of Fifth and Center streets, running thence northerly along the easterly line of Center street one hundred and eighty-five and eight and one-fourth-twelfths (185, 8 1-4-12) feet; thence at right angles easterly one hundred and sixty and eleven-twelfths (162 11-12) feet; thence at right angles southerly one hundred and eighty-six and four twelfths (186 4-12) feet to the northerly line of Fifth street; thence westerly along said line of Fifth street one hundred and sixty and four-twelfths (160 4-12) feet to the easterly line of Center street and the point of commencement.

Ninth. That certain lot of land in the said city of Oakland commencing at a point in the northeasterly corner of Adeline and Fifth streets, running thence northerly along the easterly line of Adeline street one hundred and one and three-twelfths (101 3-12) feet; thence easterly five hundred and seventy-eight (578) feet, to a point in the westerly line of Linden street, which is distant one hundred and two (102) feet northerly from the northwesterly corner of Fifth and Linden streets; thence southerly along the westerly line of Linden street one hundred and two (102) feet to the northerly line of Fifth street; thence westerly along said line of Fifth street five hundred and

seventy-eight (578) feet to the easterly line of Adeline street and point of commencement.

Tenth. That certain lot of land in the said city of Oakland commencing at a point in the southeasterly corner of Adeline and Fifth streets, running thence southerly along the easterly line of Adeline street ninety-seven and three-twelfths (97 $\frac{3}{12}$) feet; thence easterly two hundred and fifty-four (254) feet, to a point in the westerly line of Chestnut street, which is distant ninety-seven (97) feet southerly from the southwesterly corner of Fifth and Chestnut streets; thence northerly along the westerly line of Chestnut street ninety-seven (97) feet to the southerly line of Fifth street; thence westerly along said line of Fifth street two hundred and fifty-four (254) feet to the easterly line of Adeline street and the point of commencement.

Eleventh. That certain block of land in the said city of Oakland known as East Oakland Block number twenty-eight (28), bounded by East Eleventh street, East Twelfth street, Second avenue, and Third avenue.

Twelfth. That certain fractional block of land in said city of Oakland known as fractional block number (26), in East Oakland, bounded by East Twelfth street, First avenue, and the creek.

Thirteenth. The undivided one-half part of that certain tract of land in the said county of Alameda and Oakland township, known as plot ninety-one (91), as laid down and designated on Kellersberger's survey of said Oakland township.

Fourteenth. All of that certain tract or parcel of land lying, being, and situate in the said county of Ala-

meda, and in Murray township, beginning at a point in the northerly line of the county road number 1515, at station L. P. V. of the survey of the exterior boundary line of the Rancho las Pocitas; thence along the boundary of said Rancho las Pocitas north thirteen hundred and ninety-three (1393) feet, to the lands of E. C. Newell; thence eight hundred and twenty-nine and two-tenths ($829\frac{2}{10}$) feet to the center of a private road; thence along the center line of said road south thirteen hundred and ninety-three (1393) feet to the northerly line of said county road number 1515; thence west eight hundred and thirty-three and five-tenths ($833\frac{5}{10}$) feet to the place of beginning, containing 26.59 acres, and being portion of plot J of the subdivision of said rancho.

Fifteenth. That certain lot of land in the city and county of San Francisco, in said State, commencing at a point in the southerly line of Pacific street, distant one hundred and sixty-five (165) feet westerly from the south-westerly corner of Pacific and Taylor streets; running thence westerly along the southerly line of Pacific street one hundred and forty-two and one-half ($142\frac{1}{2}$) feet; thence at right angles southerly one hundred and seven and one-half ($107\frac{1}{2}$) feet; thence at right angles easterly thirty-two and one-half ($32\frac{1}{2}$) feet; thence at right angles southerly thirty (30) feet; thence at right angles easterly one hundred and ten (110) feet; thence at right angles northerly one hundred and thirty-seven and one-half ($137\frac{1}{2}$) feet, to the southerly line of Pacific street and point of commencement.

Sixteenth. An undivided one-fourth interest in and to the water property in the said city and county of San

Francisco, at North Beach, bounded by Larkin, Polk, Tonquin streets and Ship Channel.

And does hereby transfer and deliver to the party of the second part the sum of six thousand one hundred and fifty dollars (\$6,150) in the gold coin of the United States.

To have and to hold the same and every part thereof to him, the party of the second part, and to his heirs and assigns forever, upon the trusts, confidence, and conditions herein declared, that is to say:

First. That the party of the second part shall take and receive all the rents, issues, income, and profits produced, or to be produced by, or derived, or to be derived, from the properties herein conveyed, assigned, transferred, or delivered to him, and, after deducting therefrom the commissions, compensation, and expenses hereinafter provided for, divide the net of such rents, issues, profits, and income monthly into two equal parts, and pay one of said parts to each of the aforementioned nephews of the party of the first part, viz., the said Frederick A. Merritt and the said James P. Merritt, for so long a time during their respective natural lives and the natural life of the survivor of them, as they and each of them shall faithfully observe, comply with, and not exceed or violate the terms, conditions, and limitations hereinafter imposed upon their and each of their rights to the receipt and enjoyment of such income.

Second. In case of the death of either of the said Frederick A. Merritt or the said James P. Merritt, if the one so first dying leaves a widow and child or children, the party of the second part shall pay the one-half of said rents and income to said widow and child or children, in

the proportion of one-fourth to such widow, and the remaining three-fourths to such child or children, or to his, her, or their legally appointed guardian. If the one so first dying leaves him surviving a widow only, the one-fourth of such rents or income to be paid to such widow, as long as she remains such, for and during the life of the survivor of said Frederick A. Merritt and James P. Merritt, and the remaining three-fourths in this event to be paid to the survivor of the said Frederick A. Merritt and the said James P. Merritt, for and during his natural life; if the party so first dying shall leave him surviving a child or children and no widow, the whole moiety of the one so dying, of said rents and income, shall be paid to such child or children, or to his, or her, or their legally appointed guardian for and during the period of the natural life of the survivor of the said Frederick A. Merritt and James P. Merritt, and if the one of the said nephews, Frederick A. Merritt and James P. Merritt, so first dying, leave no widow or child him surviving, the whole of the income and rents of the entire trust estate is to be paid to the survivor of the said nephews, Frederick A. Merritt and James P. Merritt, for and during the term of his natural life. Upon the death of the survivor of the said Frederick A. Merritt and James P. Merritt, the said party of the second part shall dispose of the entire trust estate, as follows, viz:

If the one of said nephews, James P. Merritt and Frederick A. Merritt, who may have first died, shall leave any child or children who then survive, and the survivor of the said Frederick A. Merritt and James P. Merritt, shall likewise leave him surviving any child or children, the

whole estate shall be divided per capita between all of the children of the said Frederick A. Merritt and James P. Merritt. If the one first dying leaves him surviving no child or children, who may be living at the time of the death of the survivor of the said Frederick A. Merritt and James P. Merritt, and the one of the said nephews, James P. Merritt and Frederick A. Merritt who may live the longest, leaves him surviving any child or children, the whole estate shall go to such child or children; and if the one of the said nephews Frederick A. Merritt and James P. Merritt, who may live the longest, dies without leaving any child or children, but the one first dying has left him surviving any child or children, who may be living at the time of the death of the survivor of said Frederick A. Merritt and James P. Merritt, the whole estate shall go to such child or children; and in the event that both of the said nephews, Frederick A. Merritt and James P. Merritt, shall die without leaving them surviving any child or children, the whole of the said estate shall go to such person or persons, who, at the time of the death of the survivor of the said nephews, Frederick A. Merritt and James P. Merritt, may be his heirs at law, claiming only through the paternal line of such survivor.

Third. The terms, conditions, and limitations imposed upon the rights of the said Frederick A. Merritt and James P. Merritt, and each of them, and the survivor of them, to receive and enjoy the income of the property herein conveyed or delivered to the party of the second part, are as follows: That neither the said Frederick A. Merritt or James P. Merritt shall anticipate such income or transfer, assign, mortgage, pledge, or hypothecate the

same, or any part thereof, in any manner, or to any extent whatsoever, or attempt so to do, or do, or suffer any act or thing, which could or might result in the transfer or assignment thereof, or of any part thereof, by operation of law, in the absence of, or but for these restrictions and limitations; and the terms, conditions, and limitations, herein expressed, provided, and imposed, shall apply to, govern, control, and limit all and every right of the said Frederick A. Merritt and James P. Merritt, and each of them, to the receipt of any of the income, rents, or profits of the property hereby conveyed or delivered to the party of the second part, is created or evidenced by this indenture in any of its parts.

Fourth. And this conveyance is made upon the express condition that neither the said trust property, nor the right of the said beneficiaries of said trust to the rents, issues, profits, or income thereof, shall be subject to sale, assignment, transfer, mortgage, pledge, or other alienation whatever, by said beneficiaries, or either of them; nor shall the said property or rights be subject to the claims of the present or future creditors of either of said beneficiaries.

Fifth. That should the said Frederick A. Merritt, or James P. Merritt, or either of them, neglect or fail to faithfully observe and comply with, or should they, or either of them, exceed or violate, or attempt or try to exceed or violate, the terms, conditions, and limitations, hereinbefore imposed, or any of them, upon their and each of their rights to receive and enjoy the income, rents, and profits of the property hereby conveyed or delivered to the party of the second part, the said party of the

second part shall dispose of said rents, income, and profits, as follows, viz:

That part of said income, which would otherwise have been paid to the beneficiary, who neglected or failed to observe and comply with, or who exceeded or violated, or attempted to exceed or violate, such terms, conditions, and limitations, or any of them, or so much thereof as the party of the second part, or his successor or successors in this trust may, in his or their sole and uncontrolled discretion deem proper or necessary, may be expended by the party of the second part, for the personal support and maintenance of the said beneficiary; should such beneficiary then or thereafter have a wife or child, or children, the party of the second part, or his successor or successors in this trust, shall, after making such provision as he or they may see fit for the personal support and maintenance of such beneficiary, expend the remainder of such income for the benefit, support, or maintenance of such wife or child, or children, as the case may be; but in event that there shall be no such wife, child, or children, any surplus of such income, which may remain after making provision for the personal support and maintenance of such beneficiary, shall be paid by the party of the second part, or his successors in the trust, to that one of said beneficiaries who may have faithfully observed and complied with the terms, conditions, and limitations herein and hereby imposed. But should both of said beneficiaries have failed to observe and comply with said terms, conditions, and limitations, then such surplus of income, if any, shall be paid by the party of the second part to that person or those persons who shall be entitled

to the principal or corpus of the property hereby conveyed, if both of said beneficiaries were then deceased, without leaving him or them surviving any child or children.

Sixth. That the party of the second part and his successor or successors in this trust, shall have full, ample, and unlimited power to bargain, sell, and convey all, any, and every of the real estate herein described and conveyed, saving and excepting only those five parcels or tracts which are described as follows, viz:

1. Block number one hundred and sixty-eight(168), in the city of Oakland, bounded by Madison, Thirteenth, Oak, and Twelfth streets.

2. That portion of block number one hundred and ninety-seven (197), in said city of Oakland, described follows:

Commencing at the northeasterly corner of Madison and Thirteenth streets, running thence northerly along the easterly line of Madison street two hundred (200) feet, to the southerly line of Fourteenth street; thence easterly along the said line of Fourteenth street three hundred (300) feet, to the westerly line of Oak street; thence southerly along said line of Oak street one hundred and forty (140) feet; thence at right angles westerly one hundred and twenty (120) feet; thence at right angles southerly sixty (60) feet, to the northerly line of Thirteenth street; thence westerly along said line of Thirteenth street one hundred and eighty (180) feet, to Madison street, and the point of commencement, together with the improvements thereon.

3. That certain lot of land in said city of Oakland

known as block number one hundred and nine (109), bounded by Seventh, Eighth, Market, and West streets.

4. That certain lot of land in said city of Oakland, known as block number one hundred and ten (110), bounded by Eighth, Ninth, Market, and West streets.

5. That certain lot of land in the said city of Oakland, commencing at a point in the northeasterly corner of Webster and Eleventh streets, running thence northerly along the easterly line of Webster street one hundred (100) feet; thence at right angles easterly one hundred (100) feet; thence at right angles southerly one hundred (100) feet, to the northerly line of Eleventh street; thence westerly along said line of Eleventh street one hundred (100) feet, to Webster street, and the point of commencement, being lots numbers one, two, three, four, and twenty-eight, in block No. 161.

He or they may, and it shall be his or their duty, to make such sale or sales, whenever in his or their judgment the said property can be advantageously sold, and the same may be sold in such parcels or subdivisions, and at public or private sale, and upon credit or for cash, or partly upon credit and partly for cash, as to the party of the second part, or his successor or successors may seem meet, right, and for the best interests of the trust estate; and he or they may, upon the receipt of the purchase money, convey the property so sold to the purchaser thereof, without any liability upon the part of such purchaser to look to the application of the purchase money. And when the party of the second part, or his successor or successors in this trust, may have so sold any such real estate and received the purchase money therefor, it

shall be his or their duty to expend the same in the improvement of some one or more of those pieces or parcels of real estate herein described, and as to which the party of the second part or his successor or successors, have no power of sale, so as to make the same productive of an income, or to increase the productiveness thereof. All moneys which may come to the hands of the party of the second part, or his successor or successors in this trust, shall be immediately deposited to his or their credit, as trustees hereunder, in some solvent and reputable savings bank in this State, so that the same may earn some interest, until the same is needed or required to be expended in making improvements upon said real estate.

7. That the party of the second part, and his successor or successors in the trust hereby created, may permit either the said Frederick A. Merritt or James P. Merritt, when he may marry, to occupy any dwelling house property, being a part of the trust estate, as his residence, as long as he may continue to have an absolute right to any part of the income of the trust estate, deducting from his or their respective portions of said income the rental value thereof.

Eighth. The party of the second part, or his successor or successors, in the trust hereby created, shall be entitled to charge to and deduct from the income of the trust estate, before any division or appropriation thereof for any purpose:

1. All taxes or assessments, State, county, city, or township, that he or they may have paid upon any part of the trust estate.

2. All expenses, which he or they may have incurred

in the care, preservation, repair, or improvement, or betterment of any part of the trust estate, including such reasonable counsel or attorney's fees, as he or they may be required to pay.

3. A commission or compensation for his or their services, of five per cent (5 per cent) upon the rents, income, and profits of the trust property received by him or them.

And in addition to these charges against the trust estate, the party of the second part, or his successor or successors in the trust, shall be entitled to a personal compensation, equal to four per cent (4 per cent) upon the net proceeds of the sale of the real estate, which is directed herein to be sold, and which will be in full for all services rendered in connection with such sale or sales, as well as in connection with the disbursement of such proceeds in the improvement of the real estate, which is to be held as part of the trust estate.

This deed is made by the party of the first part, and the estate hereby conveyed is hereby granted upon the strict condition subsequent, that the same shall be at once and ipso facto defeated and avoided, as to all the property, real and personal, then constituting the trust estate, should the said Frederick A. Merritt or James P. Merritt, or their or either or any of their heirs, or the heirs, or any of the heirs of either of them, at any time, dispute, question, or contest the legality or validity of any disposition, which the party of the first part may make by deed or last will and testament of any part of the property, real or personal, derived by her from or through the late Dr. Samuel Merritt. And should such dispute, question, or contest be made after the death of the party of the first

part hereto, the said party of the first part does hereby designate as the person or persons, who may take advantage of the breach of such condition, and who may enter into and possess all such estate and property, in absolute ownership, that person, or those persons, who may be the residuary legatee or legatees, or devisee or devisees, of her estate, as named in her last will and testament, and in default of any such residuary legatee or legatees, devisee or devisees, then there is hereby designated for the purpose aforesaid, such person or persons as would be entitled to the principal or the corpus of the trust property or estate, had the said Frederick A. Merritt or James P. Merritt died immediately after such dispute, question, or contest has been made, without leaving him or them surviving any wife or child, as is hereinbefore provided for.

In case of the death or resignation of the party of the second part, or of his inability to discharge the duties of the trust hereby created, a successor of the party of the second part may be appointed in the manner following, viz:

By deed of appointment, to be made and executed by the party of the first part hereto, and either or both of the beneficiaries of the trust hereby created, i. e., either or both of the said Frederick A. Merritt and James P. Merritt, and in case that the party of the first part hereto may not then be alive, by deed of appointment, made by either or both the said Frederick A. Merritt and James P. Merritt, and by the judge of the Superior Court of the State of California, in and for the county of Alameda, who may have been longest in commission as such judge.

In testimony whereof, the parties of the first and second parts have hereto set their hands and seals the day and year first above written.

CATHERINE M. GARCELON, [Seal.]

J. N. KNOWLES, [Seal.]

Signed, sealed, and delivered in the presence of

S. W. PURINGTON.

Exhibit No. 3 to Original Bill.

RELEASE—J. P. and F. A. MERRITT to CATHERINE M. GARCELON.

(Also attached as Exhibit "C" to Second Supplemental Bill.

Know All Men By These Presents: That we, James P. Merritt and Fred A. Merritt, of the city of San Francisco, State of California, for and in consideration of the sum of one dollar to each of us in hand paid by Catherine M. Garcelon, of the city of Oakland, county of Alameda, State of California, the receipt of which is hereby acknowledged, and of divers other valuable considerations received by us from the said Catherine M. Garcelon, have granted, bargained, sold, remised, released, conveyed, confirmed, assigned, and set over, and by these presents do grant, bargain, sell, remise, release, convey, confirm, assign, and set over, to the said Catherine M. Garcelon, and to her heirs and assigns, all of the estate, real, personal, and mixed, and wheresoever situate, of which the late Dr. Samuel Merritt, of said city of Oakland, was seised or possessed, or to which he was in anywise en-

titled at the time of his death, and particularly of any right, title, or interest in and to said estate, or any part or portion thereof, to which we, or either of us, could have had any claim or right, as heirs, or one of the heirs, at law of said Samuel Merritt, had he died intestate, and a full and perfect description of said property is supposed to be contained in the inventories filed in the Superior Court of Alameda county, in the matter of the estate of said Samuel Merritt, and reference is hereby made thereto for a more perfect description of said property, to have and to hold the same unto the said Catherine M. Garcelon, and to her heirs and assigns forever.

And for the consideration aforesaid, we do jointly and severally agree for ourselves, and for our heirs, to warrant and defend the title of the said Catherine M. Garcelon and her devisees, legatees, and assigns, against any and all claim to the property aforesaid, and every part and parcel thereof, to be made by us or either of us, or by our heirs, or the heirs of either of us, or by anyone claiming or to claim by, through, or under us, or either of us, saving and excepting only such claim as we or either of us may hereafter be able legally to assert as devisee or devisees, legatee or legatees, under the last will and testament of the said Catherine M. Garcelon.

And for the consideration aforesaid, we do hereby jointly and severally covenant, promise, and agree, for ourselves and each of our heirs, to and with the said Catherine M. Garcelon, her heirs, devisees, legatees, executors, administrators, and assigns, that neither we, nor either of us, nor the heirs of either of us, shall or will in any manner or to any extent, question, dispute, or contest any

disposition of the property above-mentioned or referred to, or any part thereof, or of any property which may be acquired therefrom or thereby, which the said Catherine M. Garcelon may have made or may hereafter make, by either deed or by her last will and testament.

And for the consideration aforesaid, we do each hereby forever release and discharge the said Catherine M. Garcelon of and from all obligation to make any other and further property provision for us or either of us, by reason of the contingency that either of us may be one of her heirs at law, hereby acknowledging that she has already made all such provision, that is reasonable and just, and to our satisfaction.

In testimony whereof, the parties hereto have hereunto set their hands and seals this fourteenth day of November, A. D. 1890.

(Signed) J. P. MERRITT, [Seal]

(Signed) FRED. A. MERRITT, [Seal]

In the presence of

GAILLARD STONEY.

Exhibit No. 4 to Original Bill.

AGREEMENT—J. P. AND F. A. MERRITT WITH
CATHERINE M. GARCELON.

(Also Attached as Exhibit "D" to Second Supplemental
Bill.

Know All Men By These Presents: Whereas, the late Samuel Merritt, of the city of Oakland, county of Alameda, State of California, died on or about the day

of August, 1890, leaving him surviving Catherine M. Garcelon, his sister, and the undersigned, James P. Merritt and Fred. A. Merritt, of the city and county of San Francisco, in said State, his nephews, his only heirs at law; and

Whereas, the said Samuel Merritt was, at the time of his death, seised and possessed of a large estate, consisting of both personal and real property, all of which he disposed of in and by his last will and testament, which has heretofore been duly admitted to probate in and by the Superior Court of the State of California, in and for said county of Alameda; and

Whereas, in and by said last will and testament, the great bulk of said estate was devised and bequeathed to the said Catherine M. Garcelon; and

Whereas, the undersigned, James P. Merritt and Frederick A. Merritt, were dissatisfied with the provisions made in said will for them, and threatened to contest the validity thereof; and

Whereas, the undersigned and the said Catherine M. Garcelon have mutually agreed upon a settlement and adjustment of their respective property rights and interests in the property and estate of which the said Samuel Merritt was seised or possessed, and in such settlement and adjustment, the said Catherine M. Garcelon has made satisfactory provision for the undersigned; and

Whereas, the said Catherine M. Garcelon has been induced to make such settlement and adjustment, and such provision for the undersigned, in reliance upon their respective promises and agreements, that they, nor either of them, would never at any time hereafter, in any man-

ner or to any extent, question, dispute, or contest, as her heirs at law or otherwise, any disposition which she may have made, or may hereafter make, by deed or will, of any or all of the property derived by her from the estate of the said Samuel Merritt.

Now, therefore, for and in consideration of the premises, the undersigned do hereby promise, covenant, and agree, to and with the said Catherine M. Garcelon, her devisees, legatees, and assigns, that they nor either of them, nor their respective heirs, shall or will at any time hereafter assert any right, title, or interest, as heir or heirs at law of the said Catherine M. Garcelon, to the property, real and personal, derived by her under the said last will and testament of the said Samuel Merritt, whether said property may consist of the identical property so derived from the said Samuel Merritt, or of and from the rents, incomes, and profits thereof, or by the sale of any part of the same and the reinvestment of the proceeds of such sale.

In witness whereof, we do hereby set our hands and seals, this fourteenth day of November, 1890.

(Signed) J.P. MERRITT. [Seal]

(Signed) FRED. A. MERRITT. [Seal]

Signed, sealed, and delivered in the presence of

GAILLARD STONEY.

Exhibit No. 5 to Original Bill.

INDENTURE—CATHERINE M. GARCELON AND
S. W. PURINGTON AND J. A. STANLY.

(Also Attached as Exhibit "E" to Second Supplemental
Bill.)

This indenture, made this twenty-first day of April, in the year of our Lord one thousand eight hundred and ninety-one, between Catherine M. Garcelon, of the city of Oakland, county of Alameda, State of California, the party of the first part, and Stephen W. Purington, John A. Stanly, of the same city, county, and State, the parties of the second part:

Witnesseth: That the said party of the first part, for and in consideration of the sum of five dollars (\$5), lawful money of the United States of America, to her in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, conveyed, and confirmed, and by these presents does grant, bargain, and sell, convey, and confirm, unto the said parties of the second part, and to their heirs, assigns, and successors forever, all those certain lots, pieces, or parcels hereinafter particularly described, towit:

All those lots, pieces, or parcels of land, situate, lying, and being in the said city of Oakland, described as follows:

First. Block number 169, bounded west by Jackson street, north by Thirteenth street, east by Madison and south by Twelfth street.

Second. Lot, commencing at a point on the easterly line of Jackson street, distant one hundred and twenty (120) feet northerly from the northeasterly corner of Jackson and Thirteenth streets, running thence northerly along said line of Jackson street, eighty (80) feet, to the southerly line of Fourteenth street; thence easterly along said line of Fourteenth street, one hundred and fifty (150) feet; thence at right angles southerly eighty (80) feet; thence at right angles westerly one hundred and fifty (150) feet, to Jackson street and point of commencement, being a portion of block 196.

Third. Block bounded by Jackson, Madison, Fourteenth, and Fifteenth streets, fronting 304 feet on Jackson and Madison streets, and three hundred feet on Fourteenth and Fifteenth streets.

Fourth. Lot, commencing at the northwesterly corner of Madison and Fifteenth streets, running thence northerly along the westerly line of Madison street eighty-eight and one-half ($88\frac{1}{2}$) feet, more or less, to fence dividing said lot from lot formerly belonging to ——— Redding; thence at right angles westerly one hundred and fifty (150) feet; thence at right angles southerly eighty-eight and one-half ($88\frac{1}{2}$) feet, more or less, to the northerly line of Fifteenth street; thence easterly along said line of Fifteenth street one hundred and fifty (150) feet, to Madison and point of commencement.

Fifth. Lot, commencing at a point in westerly line of Madison street, distant one hundred and seventy-seven (177) feet northerly from the northwesterly corner of Madison and Fifteenth streets; running thence northerly along said line of Madison street eighty-eight and one-

half ($88\frac{1}{2}$) feet, thence at right angles westerly one hundred and fifty (150) feet; thence at right angles southerly eighty-eight and one-half ($88\frac{1}{2}$) feet; thence at right angles easterly one hundred and fifty (150) feet to Madison street and point of commencement.

Sixth. Lot, commencing at a point in westerly line of Madison street, distant two hundred and ten' (210) feet southerly from the southwesterly corner of Madison and Lake streets, running thence southerly along said line of Madison street ninety (90) feet; thence at right angles westerly one hundred and fifty (150) feet; thence at right angles northerly ninety (90) feet; thence at right angles easterly one hundred and fifty (150) feet, to Madison street and point of commencement.

Seventh. Lot, commencing at a point in the northeasterly corner of Madison and Fourteenth streets, running thence northerly along the easterly line of Madison street, nine hundred and twenty-two (922) feet, more or less, to a point distant one hundred (100) feet southerly from the southerly line of Lake street; thence at right angles easterly three hundred (300) feet, to the westerly line of Oak street; thence southerly along said line of Oak street seven hundred and six (706) feet, more or less, to a point distant two hundred and sixteen (216) feet northerly from the northerly line of Fourteenth street; thence at right angles westerly one hundred and fifty (150) feet; thence at right angles southerly two hundred and sixteen (216) feet, to the northerly line of Fourteenth street; thence westerly along said line of Fourteenth street one hundred and fifty (150) feet, to Madison street and point of commencement.

Eighth. Lot, commencing at a point in the easterly line of Oak street, distant two hundred (200) feet northerly from the northerly line of Thirteenth street; running thence northerly along said line of Oak street one hundred and eighty-four (184) feet; thence at right angles easterly to the shore of Lake Merritt; thence southerly along and following the shore of Lake Merritt, to a point that would be intersected by a line drawn from the point of commencement easterly and at right angles with Oak street; thence westerly in a straight line to the point of commencement.

Ninth. Lot, commencing at a point in the easterly line of Oak street, distant four hundred and ninety-four (494) feet northerly from the northerly line of Thirteenth street, running thence northerly along said line of Oak street, eight hundred and fifty-eight (858) feet, more or less, to the northerly line of Lake street; thence at right angles easterly to the shore of Lake Merritt; thence southerly along and following the shore of Lake Merritt, to a point that would be intersected by a line drawn from the point of commencement easterly and at right angles with Oak street; thence westerly in a straight line to the point of commencement.

Tenth. Lot, commencing at a point in the northerly line of Lake street, distant five hundred and twenty-five (525) feet easterly from the northeasterly corner of Jackson and Lake streets; thence northerly and at right angles to Lake street to the shore of Lake Merritt; thence easterly and southerly along and following the shore of Lake Merritt to a point that would be intersected by the northerly line of Lake street, if extended easterly and

parallel with the same; thence westerly along said line of Lake street, if extended easterly, and the northerly line of Lake street, three hundred and thirty-five (335) feet, more or less, to the point of commencement.

Eleventh. Lot, commencing at a point in the westerly line of Jackson street, distant six hundred and sixty (660) feet northerly from the northwesterly corner of Jackson and Thirteenth streets; running thence northerly along said line of Jackson street one hundred and fourteen (114) feet; thence at right angles westerly one hundred and seventy-five (175) feet, more or less, to lands of the O. L. Shafter Estate; thence at right angles southerly one hundred and fourteen (114) feet; thence at right angles easterly one hundred and seventy-five (175) feet, more or less, to the westerly line of Jackson street, and point of commencement.

Twelfth. Lot, commencing at a point in the north-easterly corner of Twelfth and Filbert streets; running thence northerly along the easterly line of Filbert street one hundred and fourteen and one-half ($114\frac{1}{2}$) feet; thence at right angles easterly one hundred (100) feet; thence at right angles southerly one hundred and fourteen and one-half ($114\frac{1}{2}$) feet, to the northerly line of Twelfth street; thence westerly along said line of Twelfth street one hundred (100) feet, to the easterly line of Filbert street, and point of commencement, being lots in block 570.

Thirteenth. Tract or parcel of land bounded on the north by the southerly line of First street; on the south by the north government line of the Harbor of Oakland; on the east by a line drawn parallel to the center line

of Washington street, extending from First street to the north Government line of the Harbor of the city of Oakland, and on the west by a line drawn parallel to the center line of Clay street, extending from First street to the North Government line of the Harbor of the city of Oakland, being known as blocks 206 and 226.

Fourteenth. Boathouse lot on Lake Merritt, described as follows: Situated on the north side of dam, commencing at the westerly end of the wooden portion of the dam, and running thence westerly seventy-five (75) feet, by a uniform depth northerly into the lake of seventy-five (75) feet.

Also those certain lots and parcels of land in the town of Berkeley, in the said county of Alameda, described as follows:

First. Lot, commencing at a point on the easterly line of Atherton street, distant thereon seventy-five (75) feet northerly from the northerly line of Bancroft Way; running thence northerly along said line of Atherton street seventy-five (75) feet; thence at right angles easterly one hundred and thirty-six and twenty-one one-hundredths (136.21) feet; thence at right angles southerly seventy-five (75) feet; thence at right angles westerly one hundred and thirty-six and twenty-one one-hundredths (136.21) feet, to easterly line of Atherton street and point of commencement.

Second. Lot, commencing at a point on the easterly line of Atherton street, distant one hundred and fifty (150) feet northerly from the northerly line of Bancroft Way; running thence northerly along said line of Atherton street two hundred (200) feet; thence at right angles

easterly two hundred and seventy-two and forty-two one hundredths (272.42) feet to the westerly line of Ellsworth street; thence southerly along said line of Ellsworth street two hundred (200) feet; thence at right angles westerly two hundred and seventy-two and forty-two one-hundredths (272.42) feet to the easterly line of Atherton street and point of commencement, and situate in the town of Berkeley.

Also those certain lots and parcels of land in the city and county of San Francisco, in said State, described as follows:

First. Commencing at a point in the southwest corner of Clark and Davis streets, running thence westerly along the southerly line of Clark street sixty-nine (69) feet; thence at right angles southerly sixty (60) feet; thence at right angles easterly sixty-nine (69) feet, to the westerly line of Davis street; thence northerly along said line of Davis street sixty (60) feet, to the southerly line of Clark street and point of commencement.

Second. The lot on the northeast corner of California and Drumm streets, commencing at a point in the said northwest corner, running thence northerly along the westerly line of Drumm street sixty-one and eight twelfths (61 $\frac{8}{12}$) feet; thence at right angles westerly seventy (70) feet; thence at right angles southerly, sixty-one and eight-twelfths (61 $\frac{8}{12}$) feet, to the northerly line of California street; thence easterly along said line of California street seventy (70) feet, to the westerly line of Drumm street, and point of commencement.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any-

wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto the said parties of the second part, and to their heirs, assigns, and successors forever.

In strict trust and confidence, nevertheless, that the party of the first part shall have the right to use and occupy for the term of fifteen (15) years from the date hereof, if she should so long live, those premises in the said city of Oakland now occupied by her and being the block of land hereinbefore described, bounded by Jackson, Madison, Fourteenth, and Fifteenth streets, and that the said parties of the second part, or their successor or successors in this trust, may, by and with the written consent of the party of the first part, sell and convey any part of the whole of such real estate, excepting the above-described block of land, at private or public sale, for cash, or for partly cash and partly credit, and convert the same into money or interest-bearing securities; and hold and administer the same upon the trusts and confidences expressed and declared in a certain declaration of trust, made and executed by all the parties hereto, and bearing even date with these presents. And it is hereby declared, that none of the trusts or confidences expressed or declared in said declaration of trust does, or shall be construed to, in any manner, or to any extent, abridge, limit, or control the power of sale herein given, or to require the purchaser of any such property, sold under this power, to look to the application of the purchase money

to be received by the parties of the second part upon such sale or sales. And the consent of the party of the first part to any sale or sales hereby authorized shall be manifested by her joining in any conveyance, which may be made by virtue hereof, as one of the grantors in such conveyance. And a deed of conveyance, so made by the parties hereto, or by the survivor or successor or successors of the parties of the second part and the party of the first part, shall transfer and transmit the title to the property so conveyed, as fully, to all intents and purposes, as if said declaration of trust had never been made, and the trusts, declared by said declaration of trust, had been made subject to this power of sale and conveyance.

In witness whereof, the said party of the first part has hereunto set her hand and seal, the day and year first above written.

(Signed) CATHERINE M. GARCELON [Seal]

Signed, Sealed, and delivered in the presence of

P. D. BROWNE,

Notary Public.

Exhibit No. 6 to Original Bill.

INDENTURE—CATHERINE M. GARCELON AND
S. W. PURINGTON AND J. A. STANLY.

(Also Attached to Exhibit "F" to Second Supplemental
Bill.

This indenture, made and entered into this twenty-first day of April, 1891, between Catherine M. Garcelon, of the city of Oakland, county of Alameda, State of California,

party of the first part, and Stephen W. Purington, and John A. Stanly, of the same place, parties of the second part, witnesseth: That

Whereas, the party of the first part hereto has, by deed bearing even date with these presents, conveyed to the parties of the second part certain real estate to be held and administered by them as trustees, as will more fully appear by reference to said deed, a duplicate of which is hereto annexed, and

Whereas, the party of the first part hereto has, by a writing bearing even date herewith, transferred, assigned, and set over unto the parties of the second part hereto certain bonds, stocks, promissory notes, and other personal property, to be likewise held and administered by them as trustees, as will more fully appear by reference to said paper writing, a duplicate of which is hereto annexed; and

Whereas, the trusts upon which said real estate is to be held and administered, is only in part stated or declared in said deed, and the trust upon which said personal property to be held and administered, is not all, or only partially expressed and declared in said paper writing;

Now, therefore, these presents are intended and designed, upon the part of the party of the first part, to fully express and declare the confidences and trusts, upon which the party of the first part hereto has conveyed said real estate and assigned said personal property to the parties of the second part, and upon the part of the parties of the second part, to manifest the trusts and confidences upon which they have taken and received said deed of conveyance, and said transfer and assignment of

said personal property, and to that end the parties hereto do declare:

That said conveyance and assignment and transfer have been made and accepted upon the trusts and confidences herein expressed, that is to say:

First: That the parties of the second part shall and will, out of the rents, profits, and income to be derived from said real and personal property, or from any and all other property, real or personal, into which the same may be converted or reinvested, pay all costs, and charges of administering the trust hereby declared, including all taxes and assessments upon the property, and all costs, charges and expenses of maintenance, improvement and repair and pay to the party of the first part hereto, from time to time, as she may demand or require, all of the net income derived therefrom, or so much thereof as she may, from time to time, demand or require, for the full term of fifteen years from the date hereof, should the party of the first part so long live. That the parties of the second part, and the survivor of them, and their successor or successors, shall and may, from time to time, as they may deem best, change and alter any and all of the existing investments of such personal property, and to that end shall and may, as to them may seem meet, collect, sell, transfer, and assign any or all of said personal property, and invest and reinvest the same, or the proceeds thereof, in such other interest-bearing securities, or savings bank deposits, as they may deem best for the best interests of the trust estate; and this power of investment and reinvestment shall extend to all the proceeds of the sale of any and all real estate, which the parties of the

second part may sell and¹ dispose of, under and by virtue of the power of sale given and confirmed in said deed, or in this declaration of trust. That if, at the time of the death of the party of the first part, there shall remain in the hands of the parties of the second part, any portion of the incomes and profits of said property, which may not have been demanded or required by the party of the first part, as hereinbefore provided for, the same shall constitute a part of the principal of the trust estate.

Second. That at the expiration of said term of fifteen years from the date hereof, or upon the death of the party of the first part hereto, should said death occur during said term, the parties of the second part, or the survivor of them, or his or their successor or successors, in this trust, shall, as soon as the same can be done consistently, with the best interests of the trust estate, convert the entire trust estate into money, or into interest-bearing securities, or savings bank deposits, and from and out of the moneys so realized, they shall pay to the several persons in this subdivision named, who may then be alive, the several and respective sums of money herein named, that is to say:

First. To Mrs. Francis J. Lovell, of Oakland, California, the sum of three thousand dollars (\$3,000).

Second. To Willie Merritt Brown, of Oakland, California, the sum of two thousand dollars (\$2,000).

Third. To Catherine M. Noyes, of Topsham, Maine, the sum of two thousand dollars (\$2,000).

Fourth. To Stephen P. Lunt, of San Francisco, California, the sum of five thousand dollars (\$5,000).

Fifth. To Mrs. Nettie Lunt, wife of said Stephen P. Lunt, and to Herbert C., Stephen P., Jr., Samuel C., Raymond M., and James C., the sons of said Stephen P. Lunt, and Dottie C. and Mrs. Lillian L. Cummings, daughters of said Stephen P. Lunt, the sum of one thousand dollars (\$1,000) each.

Sixth. To Dr. Augustus Brown, of Boston, Massachusetts, the sum of two thousand dollars (\$2,000).

Seventh. To Miss Ella Brown, of Boston, Massachusetts, the sister of the said Dr. Augustus Brown, the sum of two thousand dollars (\$2,000).

Eighth. To S. K. Ballard, of San Francisco, California, the sum of two thousand dollars (\$2,000).

Ninth. To Miss Laura A. Ballard, of San Francisco, California, the sum of one thousand dollars (\$1,000).

Tenth. To Mrs. Nellie Gordon, of Oakland, California, the sum of five thousand dollars (\$5,000).

Eleventh. To Mrs. Deborah Dyer, wife of J. P. Dyer, of Oakland, California, the sum of one thousand dollars (\$1,000).

Twelfth. To Miss Minnie Dyer, of Oakland, California, the sum of five thousand dollars (\$5,000).

Thirteenth. To Miss Ruth Dyer, of Oakland, California, the sum of one thousand dollars (\$1,000).

Fourteenth. To Miss Jennie Dyer, of Oakland, California, the sum of one thousand dollars (\$1,000).

Fifteenth. To Mrs. Alice Dyer Otis, of Spokane, Washington, the sum of two thousand dollars (\$2,000).

Sixteenth. To Mrs. Harriet Small, of Bowdoinham, Maine, the sum of one thousand dollars (\$1,000).

Seventeenth. To Miss May Haley, of Kennebunk, Maine, the sum of one thousand dollars (\$1,000).

Eighteenth. To James Woodbury Cone, of Brookfield, Massachusetts, the sum of two thousand dollars (\$2,000).

Nineteenth. To Mrs. Caroline T. Everett, of San Francisco, California, the sum of five thousand dollars (\$5,000).

Twentieth. To Miss Stella, daughter of Mrs. Everett, of San Francisco, California, the sum of one thousand dollars (\$1,000).

Twenty-first. To Captain Albert Otis, of Brunswick, Maine, the sum of two thousand dollars (\$2,000).

Twenty-second. To Mrs. Helen Otis, of Brunswick, Maine, the sum of one thousand dollars (\$1,000).

Twenty-third. To Miss Alice Otis, of Brunswick, Maine, the sum of one thousand dollars (\$1,000).

Twenty-fourth. To Miss Carrie Otis, of Brunswick, Maine, the sum of one thousand dollars (\$1,000).

Twenty-fifth. To Catherine Elizabeth Coghill, daughter of Thomas B. Coghill, of Oakland, California, the sum of one thousand dollars (\$1,000).

Twenty-sixth. To Kate M. Lunt, of Lisbon, Maine, the sum of two thousand dollars (\$2,000).

Twenty-seventh. To Ezekiel Cooper (colored), of San Francisco, California, the sum of one thousand dollars (\$1,000).

Twenty-eighth. To Mrs. Ruth Purinton, of Brunswick, Maine, the sum of three hundred dollars (\$300).

Twenty-ninth. To Mrs. May Smith, daughter of Ruth Purinton, of Brunswick, Maine, the sum of three thousand dollars (\$3,000), as and for her separate property

and estate, free and clear of all control of her husband or his creditors.

Thirtieth. To Miss Catherine Smith, daughter of May Smith, of Brunswick, Maine, the sum of five thousand dollars (\$5,000).

Thirty-first. To Miss Minnie Smith, daughter of May Smith, of Brunswick, Maine, the sum of two thousand dollars (\$2,000).

Thirty-second. To Miss Helen Smith, daughter of May Smith, of Brunswick, Maine, the sum of two thousand dollars (\$2,000).

Thirty-third. To Charles Smith, son of May Smith, of Brunswick, Maine, the sum of two thousand dollars (\$2,000).

Thirty-fourth. To Samuel M. Smith, son of May Smith, of Brunswick, Maine, the sum of two thousand dollars (\$2,000).

Thirty-fifth. To Charles P. Purinton, son of Ruth Purinton, of Oakland, California, the sum of five thousand dollars (\$5,000).

Thirty-sixth. To Nellie Purinton, wife of the said Charles P. Purinton, of Oakland, California, the sum of one thousand dollars (\$1,000).

Thirty-seventh. To Page Purinton, son of the said Charles P. Purinton, of Oakland, California, the sum of one thousand dollars (\$1,000).

Thirty-eighth. To John Alexander, of Topsham, Maine, the sum of two thousand dollars (\$2,000).

Thirty-ninth. To Haley Alexander, of Lynn, Massachusetts, the sum of two thousand dollars (\$2,000).

Fortieth. To Franklin Alexander, of Lynn, Massachusetts, the sum of two thousand dollars (\$2,000).

Forty-first. To Mrs. Mariana Gowell, daughter of John Alexander, deceased, of Topsham, Maine, the sum of one thousand dollars (\$1,000).

Forty-second. To Mrs. Almira Carr, daughter of John Alexander, deceased, of Topsham, Maine, the sum of one thousand dollars (\$1,000).

Forty-third. To William Purinton, son of Albert Purinton, deceased, of Bangor, Maine, the sum of two thousand dollars (\$2,000).

Forty-fourth. To Nathaniel Purinton, son of Albert Purinton, deceased, of Bangor, Maine, the sum of two thousand dollars (\$2,000).

Forty-fifth. To Mrs. Fannie Brown, daughter of Albert Purinton, deceased, of San Luis Obispo, California, the sum of two thousand dollars (\$2,000). (

Forty-sixth. To Miss Susan Purinton, daughter of Albert Purinton, deceased, of Bangor, Maine, the sum of two thousand dollars (\$2,000).

Forty-seventh. To Miss Lillian Purinton, daughter of Albert Purinton, deceased, of Bangor, Maine, the sum of two thousand dollars (\$2,000).

Forty-eighth. To Mrs. Charles Purinton, wife of Charles Purinton, deceased, of Bowdoinham, Maine, the sum of one thousand dollars (\$1,000).

Forty-ninth. To Ralph Purinton, son of Charles Purinton, deceased, of Bowdoinham, Maine, the sum of five hundred dollars (\$500).

Fiftieth. To Rinaldo Purinton, son of Charles Purin-

ton, deceased, of Bowdoinham, Maine, the sum of five hundred dollars (\$500).

Fifty-first. To Henry S. Merritt, of North Pownal, Maine, the sum of five thousand dollars (\$5,000).

Fifty-second. To Albion S. Merritt, of Boston, Massachusetts, the sum of three thousand dollars (\$3,000).

Fifty-third. To Charles A. Merritt, of Boston, Massachusetts, the sum of three thousand dollars (\$3,000).

Fifty-fourth. To John Merritt, of Brunswick, Maine, the sum of three thousand dollars (\$3,000).

Fifty-fifth. To Fannie Merritt, daughter of John Merritt, of Brunswick, Maine, the sum of two thousand dollars (\$2,000).

Fifty-sixth. To Captain Franklin H. Purinton, of Oakland, California, the sum of ten thousand dollars (\$10,000).

Fifty-seventh. To Mary T. Purinton, wife of F. H. Purinton, of Oakland, California, the sum of one thousand dollars (\$1,000).

Fifty-eighth. To Mollie Purinton, daughter of F. H. Purinton, of Oakland, California, the sum of one thousand dollars (\$1,000).

Fifty-ninth. To Woodbury Purinton, of Harpswell, Maine, the sum of one thousand dollars (\$1,000).

Sixtieth. To Captain Stephen H. Merritt, of Oakland, California, the sum of one thousand dollars (\$1,000).

Sixty-first. To Mrs. Almira Merritt, wife of S. H. Merritt, of Oakland, California, the sum of three thousand dollars (\$3,000).

Sixty-second. To Harry P. Merritt, son of S. H. Merritt,

of Oakland, California, the sum of ten thousand dollars (\$10,000).

Sixty-third. To Mrs. Cora Merritt, wife of H. P. Merritt, of Oakland, California, the sum of one thousand dollars (\$1,000).

Sixty-fourth. To Stephen Purinton, of Harpswell, Maine, the sum of one thousand dollars (\$1,000).

Sixty-fifth. To Caroline Purinton, daughter of Stephen Purinton, of Harpswell, Maine, the sum of three thousand dollars (\$3,000).

Sixty-sixth. To Mrs. Alice Smith, daughter of Stephen Purinton, of Natick, Massachusetts, the sum of one thousand dollars (\$1,000).

Sixty-seventh. To Isabella S. Haskell, of Bridgton, Maine, the sum of two thousand dollars (\$2,000).

Sixty-eighth. To Dr. William Haskell, son of Isabella S. Haskell, of Bridgton, Maine, the sum of three thousand dollars (\$3,000).

Sixty-ninth. To Mrs. May I. Dalton, daughter of Isabella S. Haskell, of Denver, Colorado, the sum of three thousand dollars (\$3,000).

Seventieth. To Stephen W. Purinton, one of the parties of the second part hereto, the sum of twenty-five thousand dollars (\$25,000).

Seventy-first. The parties of the second part shall, immediately after the expiration of said term of fifteen years, or after the death of the party of the first part, should such death sooner occur, divide the sum of twenty-five thousand dollars (\$25,000) in equal portions, per capita, between any and all nephews and nieces, and not grand nephews or nieces, of the late Dr. Seward Garce-

lon, the late husband of the party of the first part, who may then be alive.

None of the sums of money so to be paid are made payable at any specified time, and none of them shall bear interest, but the said trustees are to pay the same, from time to time, and in whole or part, as soon as in their judgment and discretion the same can be done to the best interests of the trust estate. The party of the first part hereto, reserves to herself the power of revocation or of modification or of substitution of any or all of the trusts hereinbefore declared, such revocation, modification, or substitution to be made within such fifteen years, and to be made by her by a paper writing by her executed in the presence of a subscribing witness, or the execution of which by her is duly acknowledged before any officer of this State authorized to take and certify to the acknowledgment of deeds.

Third.

That immediately after the expiration of said period of fifteen years from the date thereof, or immediately after the death of the party of the first part hereto, should such death occur sooner, the parties of the second part shall convey to Dr. A. H. Agard, Dr. Thomas H. Pinkerton, and John A. Stanly, hereinafter named as trustees of "Samuel Merritt Hospital," or to their successors in said trust, that certain lot or tract of land in said city of Oakland, described as follows, viz:

Lot, commencing at a point in the easterly line of Oak street, distant four hundred and ninety-four (494) feet northerly from the northerly line of Thirteenth street,

running thence northerly two hundred (200) feet; thence at right angles easterly to the shore of Lake Merritt; thence southerly along and following the shore of Lake Merritt, to a point that would be intersected by a line drawn from the point of commencement easterly and at right angles with Oak street; thence westerly in a straight line to the point of commencement.

The said tract of land is given by the party of the first part as a site for the erection of the building or buildings of the said "Samuel Merritt Hospital," but it is not the purpose or intention of the party of the first part to confine or limit said trustees to said site, and she expressly confides it to their discretion to use said lot for said purpose, or to sell it and acquire another site, as they may deem best for the interest and welfare of the trust committed to them, and to this end they may, from time to time, and as often as they deem the best interest of the trust may require the same, change the site of the said "Samuel Merritt Hospital."

Fourth.

That immediately after the expiration of the said fifteen years from the date hereof, or immediately after the death of the party of the first part hereto, should such death sooner occur, the parties of the second part hereto, or their successor or successors in this trust, shall proceed with all the dispatch that in their uncontrolled discretion the interest of the trust estate will permit (but within five years from and after the end of said fifteen years, or from and after the death of the party of the first part), to convert the whole of said trust estate into

money or interest-bearing securities or savings-bank deposits, and after the payment of the sums of money hereinbefore provided for, or such as may hereafter be provided for, under and by virtue of the power of revocation, modification, and substitution hereinbefore reserved, they shall divide the rest and remainder of such moneys or interest-bearing securities or savings-bank deposits, into two unequal parts of six-tenths (6-10) and four-tenths (4-10) each, and the six-tenths (6-10) part thereof shall be paid, assigned and transferred to Dr. A. H. Agard, Dr. Thomas H. Pinkerton, and John A. Stauly, all of said city of Oakland, or to their successors in the trust hereby created, to be held by them in strict trust and confidence.

1st. That out of the surplus of said money and property, over and above the sum of \$500,000 (should there be any such surplus), or out of the income thereof, should there be no such surplus or an insufficiency of such surplus, that they shall erect, or cause to be erected, a building or buildings on the lot of land hereinbefore provided to be conveyed to them, or upon such other site as they may select and acquire for the purpose, suitable for a hospital of sufficient capacity to accommodate at least forty patients, the said hospital to be divided into four wards—two for female and two for male patients—of equal size and accommodation. Said building or buildings to be of a permanent character, and of such architectural design and finish as may be reasonably ornamental and of no detriment of the neighborhood in which it will be situated.

2nd. That they shall invest all of said money, if not more than \$500,000, or at least that amount thereof, if

there be a greater sum, so that it may produce as large an income as may be consistent with reasonable safety; that of said income five per cent (5) thereof shall annually be added to and invested as principal money, and the remainder of said income shall be expended in the support, maintenance, management, and conducting of said hospital, so as to best attain and fulfill the following purposes and intentions, that is to say:

(a) The constant and continuous medical and surgical care, attention, support, and maintenance of at least twenty persons afflicted with curable diseases, or needing medical attention, and preferably such as are citizens of the city of Oakland, and its vicinity, free of all cost, charge, and expense to such patients. It is not the purpose or design of this provision that its benefits and advantages should be availed of or extended to such persons as may be paupers, whose care is provided for by public taxation, but the beneficiaries of this provision are intended to be of that large class of all cities and towns, worthy and valuable citizens, who, though able to support and take care of themselves and those dependent upon them, when they and their families are in health, are nevertheless possessed of such limited means and income that a serious or protracted sickness of themselves, or of such as may be dependent upon them, would be financially burdensome, and the said trustees are enjoined to adopt such measures as in their uncontrolled discretion will best effectuate this purpose and intention, with a minimum of injury to the feelings, susceptibilities, or pride of the class intended to be benefited hereby.

(b) The rendition of free medical and surgical advice

and attention, together with necessary medicines, to as many of the same class of beneficiaries who may not be inmates of the hospital, as the income at their command will reasonably permit.

(c) The said trustees may provide for the admission of patients to said hospital afflicted with curable and not contagious diseases, or needing medical attention, who can pay such reasonable costs and charges as may be fixed by said trustees for the care, attention, and support which they may therein receive, but the number of said paying patients shall never be so increased as that at least one-half of the accommodations of such hospital shall not be available for the use of the nonpaying beneficiaries of this trust.

The said hospital shall be forever known as "The Samuel Merritt Hospital," and the said trustees and their successors are enjoined to provide the same with the very best medical and surgical supervision and attention that they can obtain of that school of medicine commonly known as the "regular" school and which is sometimes called the allopathic school. The party of the first part suggests to the said trustees that they will, in so far as the same can be done, consistently with their own power of absolute management and control, cultivate such relations between such hospital and any organized body of such "regular" or "allopathic" physicians as may exist in the said city of Oakland, as will constitute such organized body of physicians, patrons and visitors of such hospital and advisors in its management.

Upon the death, resignation, or permanent removal from the city of Oakland, of any one of the trustees of this

fund hereinbefore named, or of any of their successors in this trust, the vacancy so created shall be filled in the following manner, viz: The two remaining trustees shall, within thirty days thereafter, by a writing signed by them, appoint another person to fill the said vacancy, and the person appointed shall signify his acceptance thereof upon the same writing, which shall thereupon be recorded in the recorder's office of the county of Alameda (or the recorder's office of any municipality of which the city of Oakland may form a part), and the person so appointed shall thereupon have all the powers as those who are hereby appointed, and in the selections of persons to fill such vacancies, the trustees are hereby enjoined to make such selections in such manner that there shall always be two trustees members of the said regular or allopathic medical profession, of good professional standing and repute, resident in the city of Oakland, and one who is not a physician, but a man of business and affairs, resident in said city.

Should the two survivors of said trustees be unable to agree upon a person to fill such vacancy, they shall call to their assistance that judge of the Superior Court of said county of Alameda, or such other county as the city of Oakland may be a part, who has been longest in commission, and such successor shall be appointed by the three or by any two of them. Should the judicial system of the State to be changed, that there be no judges known as the judges of the Superior Court of said county, then the oldest judge in commission in said county possessing substantially the same jurisdiction as the ex-

isting judges of said Superior Court, shall be called upon to act in the exigency here provided for.

The establishment of such hospital being intended to accomplish an object of charity, it is intended that said trustees shall act without any compensation, other than the small sum of five dollars (\$5) each, for each meeting they may have upon the business affairs of their trust, not exceeding four such meetings in any one month, and which sum the party of the first part hereby requests and authorizes them to accept and receive as a stimulant to prompt and regular attendance.

Fifth.

That the remaining four-tenths (4-10) part of said moneys and securities, shall be paid, transferred, or assigned to "The President and Trustees of the Bowdoin College," an educational corporation existing under the laws of the State of Maine, the same to be held by them in trust.

1st. That the same shall constitute a perpetual fund, to be known as "The Seward Garcelon and Samuel Merriitt Fund."

2d. That said corporation shall safely invest the principal of said fund, and five per cent (5 per cent) of the income thereof shall annually be added to and invested as principal.

3d. That the remainder of said income shall be used by said corporation, the one-half for the benefit and advantage of the medical department of its college or of the Medical School of Maine under its care and direction, and the other half thereof for the benefit and advantage of its College of Letters; the mode and manner of its ex-

penditure is left to the discretion of said corporation, burdened only with the wish and desire of the party of the first part hereto, that in making use thereof, that said corporation will always bear in mind that just claims of such worthy and struggling young men, who may stand in need of pecuniary aid to enable them to complete their collegiate or professional education.

Sixth.

That in event of the death of either or both of the parties of the second part, during the lifetime of the party of the first part, the party of the first part may, by an instrument in writing, by her duly executed and acknowledged, appoint a successor or successors to the party or parties who may so die, which appointment shall be recorded in the recorder's office of Alameda county, and thereupon the person or persons so appointed shall possess all the powers and authorities as trustees as are herein given and conferred upon the parties of the second part hereto.

Seventh.

Power is hereby expressly given to and conferred upon the parties of the second part hereto, by and with the consent of the party of the first part hereto, to invest any of the funds which may be in their hands belonging to the trust in the improvement of any of the unimproved real estate belonging thereto, or in the pursuance and improvement of any real estate adjoining any real estate conveyed to the parties of the second part by the party of the first part.

In witness whereof, the parties hereto have hereunto

set their hands and seals the day and year first above written.

CATHERINE M. GARCELON, [Seal]

STEPHEN W. PURINGTON, [Seal]

JOHN A. STANLY, [Seal]

Signed, sealed, and delivered in the presence of P. D. Browne.

In the Superior Court of the County of Alameda, State of California.

PROBATE.

In the Matter of the Estate of CATH- }
ERINE M. GARCELON, Deceased. }

Exhibit "G" to Second Supplemental Bill.

PETITION FOR PROBATE OF WILL—S. W. PURINGTON AND H. P. MERRITT.

To the Hon. Superior Court of the County of Alameda, State of California.

The petition of Stephen W. Purington and Harry P. Merritt, of the city of Oakland, county of Alameda, State of California, respectfully shows:

That Catherine M. Garcelon died on or about the twenty-ninth day of December, 1891, at the city of Oakland, county of Alameda, State of California.

That said deceased, at the time of her death, was a resident of the city of Oakland, county of Alameda, in said State of California, and left estate consisting only of per-

sonal property, in the county of Alameda, State aforesaid.

That the probable value and character of the said property are as follows, towit:

Money on hand and to the credit of said deceased in bank, and household and kitchen furniture in the late residence of said deceased in said city of Oakland, and horses and carriages; that all of said property is of the value of about \$15,000.00.

That the estate and effects for and in respect of which the probate of the will hereinafter mentioned is hereinafter applied for, does not exceed the sum of fifteen thousand dollars.

That said deceased left a will bearing date the eighteenth day of November, 1891, in possession of your petitioners, which your petitioners believe and therefore allege to be the last will and testament of said deceased, and which is herewith presented to said Superior Court;

That said Stephen W. Purington and Harry P. Merritt are named in said will as executors thereof; and Frederick A. Merritt, aged about 41 years, and James P. Merritt, aged about 36 years, who are both nephews of said deceased, and your petitioners, Stephen W. Purington, aged about 63 years, and Harry P. Merritt, over the age of 21 years, and all of whom reside in said city of Oakland, county of Alameda, State aforesaid, are named therein as devisees.

That the subscribing witnesses to said will are R. G. Brown, residing in the city of Oakland, county of Alameda, State aforesaid, and Isaac Upham, residing in the said city of Oakland, county of Alameda.

That the next of kin of said testatrix, and whom your petitioners are advised and believe, and therefore allege to be the heirs at law of said testatrix, and the names, ages, and residences of said heirs are said Frederick A. Merritt, aged about 41 years, residing at said city of Oakland, county of Alameda, State aforesaid, and said James P. Merritt, aged about 36 years, residing at said city of Oakland, county of Alameda, State aforesaid.

That at the time said will was executed, to wit, on the said eighteenth day of November, 1891, the said testatrix was over the age of eighteen years, to wit, of the age of seventy-seven years or thereabouts, and was of sound and disposing mind, and not acting under duress, menace, fraud, or undue influence, and was in every respect competent by last will to dispose of all her estate.

That said will is in writing, signed by the said testatrix, and attested by said subscribing witnesses, at the request of said testatrix, subscribing their names to the said will in the presence of the said testatrix, and in the presence of each other; and at the time of attesting the execution of said will, were and now are competent.

That said testatrix requested in her said will that no bond be required of the persons named therein as executors upon the issuance to them of letters testamentary on her said estate.

That your petitioners named in said will as executors thereof consent to act as such.

Wherefore, your petitioners pray that the said will may be admitted to probate, and that letters testamentary be issued to your petitioners, and that for that purpose the "clerk" of this Court set this petition for hearing by the

Court, and appoint a time for proving said will, not less than ten nor more than thirty days from the production of said will, and that all persons interested be notified and directed to appear at the time appointed for proving the same; and that all other necessary and proper orders may be made in the premises.

And your petitioner will ever pray, etc.

A. W. PURINGTON,

H. P. MERRITT,

Petitioners.

STANLY & HAYES,

Attorneys for petitioners.

Dated January 18, A. D. 1892.

In the Superior Court of the County of Alameda, State of California.

PROBATE.

In the Matter of the Estate of CATH- }
ERINE M. GARCELON, Deceased. }

Exhibit "H" to Second Supplemental Bill.

**TESTIMONY OF APPLICANT ON PROBATE OF
WILL.**

State of California, }
City of Oakland, } ss.
County of Alameda. }

STEPHEN W. PURINGTON, being duly sworn in open Court, testifies as follows:

I am one of the persons named as executor in the docu-

ment now shown to me, marked and filed in this Court on the eighteenth day of January, 1892, purporting to be the last will and testament of Catherine M. Garcelon.

I reside in the city of Oakland, county of Alameda, State of California, and am over the age of twenty-one years.

I knew said Catherine M. Garcelon; she is dead; she died on or about the twenty-ninth day of December, 1891, at her residence in the city of Oakland, county of Alameda, State of California.

At the time of her death she was a resident of the city of Oakland, county of Alameda, State aforesaid, and left estate in said county of Alameda, State of California, consisting of personal property only.

The personal property is of the value of \$——, or thereabouts.

The said estate and effects for or in respect of which the probate of said will has been applied for does not exceed the value of \$——, all of which estate of said deceased is separate property; that said deceased was a widow at the time of her death and left no issue, father, mother, brother or sister surviving.

That said document came into my possession as follows, to wit:

and I believe the same to be her last will and testament.

The next of kin of said deceased are Frederick A. Merritt, a nephew of deceased, aged about 41 years, residing on the northwest corner of Twelfth and Alice streets, in the city of Oakland, county of Alameda, State of California, and James P. Merritt, a nephew of deceased, aged about 36 years.

On the eighteenth day of November, 1891, when said will was executed, the said deceased was over the age of eighteen years, being of the age of 77 years, or thereabouts, and was of sound and disposing mind.

Subscribed and sworn to in open Court before me this first day of February, 1892.

_____,
Clerk.

_____,
Deputy clerk.

Exhibit "I" to Second Supplemental Bill.

WILL OF CATHERINE M. GARCELON.

(Also attached as Exhibit "A" to Answer of O. C. Miller, Executor.)

I, Catherine M. Garcelon, of the city of Oakland, State of California, being of sound and disposing mind and memory, do make, publish and declare my last will and testament in manner and form as follows, towit:

First. It is my will and desire that my beloved nephews, Frederick Merritt and James P. Merritt, shall each of them, in the order they are herein named, have the right to select from the oil paintings which may be in my house at the time of my death, one (1) of said paintings, which, when so selected, I hereby give to them respectively. I make no further provision for my said nephews, or either of them, not from any want of affection for them, or from the want of a deep interest in their welfare, but for the reason that I have already, by way of a trust deed, of which they are the beneficiaries, made most ample and liberal provision for not only the main-

tenance and support of themselves, but for that of their children, should they, or either of them, leave such surviving.

Second. All the rest and residue of my estate, real, personal, and mixed, and wherever situated, I do give, devise and bequeath unto my cousins, Stephen W. Purington and Harry P. Merritt, of the city of Oakland, aforesaid, share and share alike, and as such residuary devisees and legatees they are hereby requested and directed to take the advantage of and enforce any and all breaches of the conditions contained in the deed of trust made by me to I. N. Knowles, and of which my nephews, Frederick Merritt and James P. Merritt, are the beneficiaries, and I do hereby declare that the principal object and purpose that I had in view in making this residuary devise and bequest in the naming of some person or persons who can and may enforce the conditions of said trust deed; not that I hope to pecuniarily benefit my said residuary devisees and legatees, but in the hope that the existence of such residuary devisees and legatees may have a restraining influence upon my said nephews, and prevent their doing or suffering any act or thing which would or might result in the forfeiture of their, or either of their, interests as beneficiaries under said trust deed.

Third. I do hereby nominate, constitute and appoint my said cousins, Stephen W. Purington and Harry P. Merritt, to be the executors of this my last will and testament, and I do hereby expressly direct and request that no bond or other security be required of them, or either of them, in the course of the administration of my estate.

Fourth. I do hereby expressly revoke, annul, and make void any other last will and testament at any time heretofore by me made.

In witness whereof I have hereunto set my hand this eighteenth day of November, 1891.

CATHERINE M. GARCELON.

Signed, sealed, published and declared by the above-named testatrix, Catherine M. Garcelon, as and for her last will and testament, in the presence of us, who, in her presence, at her request, and in the presence of each other, have subscribed our names as witnesses.

ISAAC UPHAM, Oakland, Cal.

R. G. BROWN, Oakland, Cal.

In the Superior Court of the County of Alameda, State of California.

N. HAMILTON,

Plaintiff,

vs.

GEORGE W. REED, as Administrator,
with the Will Annexed of the Estate
of CATHERINE M. GARCELON, De-
ceased,

Defendant.

Exhibit "K" to Second Supplemental Bill

ANSWER OF G. W. REED AS ADMINISTRATOR.

Comes now GEORGE W. REED, as administrator with the will annexed of the Estate of Catherine M. Garce-

lon, deceased, the defendant above named, and for answer to plaintiff's complaint on file herein

Denies each and every and all and singular the allegations contained in said complaint.

And now having fully answered herein, defendant prays judgment for costs.

E. NUSBAUMER,

Attorney for defendant.

In the Superior Court of the County of Alameda, State of California.

PROBATE.

In the Matter of the Estate of CATH- }
ERINE M. GARCELON, Deceased. }

'Exhibit "X" to Addendum to Second Supplemental Bill. EX-10

TESTIMONY OF H. P. MERRITT AS APPLICANT ON
PROBATE OF WILL.

State of California, }
City of Oakland, }
County of Alameda. }

HARRY P. MERRITT, being duly sworn in open Court, testifies as follows:

I am one of the persons named as executor in the document now shown me, marked and filed in this Court on the eighteenth day of January, 1892, purporting to be the last will and testament of Catherine M. Garcelon.

I reside in the city of Oakland, county of Alameda,

State of California, and am over the age of twenty-one years.

I knew said Catherine M. Garcelon; she is dead; she died on or about the twenty-ninth of December, 1891, at her residence in the city of Oakland, county of Alameda, State of California.

At the time of her death she was a resident of the city of Oakland, county of Alameda, State of California, and left estate in said county of Alameda, State of California, consisting of personal property only.

The personal property is of the value of \$13,500, or thereabouts.

The said estate and effects, for or in respect of which the probate of said will has been applied for, does not exceed the value of \$14,000, all of the estate of said deceased is separate property; that said deceased was a widow at the time of her death and left no issue, father, mother, brother, or sister surviving her.

That said document came into my possession as follows, to wit: Said document was found in the vault of the Oakland Bank of Savings, and when it was removed from thence it was filed in the office of the county clerk of said Alameda county, and I believe the same to be her last will and testament.

The next of kin of said deceased are Frederick A. Merritt, a nephew of deceased, aged about 41 years, residing on the northwest corner of Twelfth and Alice streets, in the city of Oakland, county of Alameda, State of California, and James P. Merritt, a nephew of deceased, aged about 36 years, residing at 1223 Adeline street, in said city of Oakland, in the county and State aforesaid.

On the eighteenth day of November, 1891, when said will was executed, the said deceased was over the age of eighteen years, being of the age of seventy-seven years, or thereabouts, and was of sound and disposing mind.

H. P. MERRITT.

Subscribed and sworn to before me this first day of February, A. D. 1892.

H. B. BELDEN,
Deputy Clerk.

[Endorsed]: No. 508. In the United States Circuit Court of Appeals, for the Ninth Circuit. George W. Reed, administrator, etc., et al., appellants, vs. John A. Stanly, trustee, etc., et al., appellees.

Appeal from the Circuit Court of the United States, for the Northern District of California.

Filed Jan. 7, 1899.

F. D. MONKTON,
Clerk.

